IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 216 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

SIDDHARTH JASUBHAI FAMILY TRUST

Appearance:
MR BB NAYAK FOR MR MANISH R BHATT for Petitioner.
MR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference the following question has been referred at the instance of the revenue, for the opinion of this Court in respect of the assessment year 1982-83 :

"Whether, the Tribunal is right in law and on

facts in confirming the view taken by the CIT(A) in directing the ITO to assess the income returned by the assessee trust on a substantive basis as per the provisions of law ?"

2 We have heard Mr.B.B.Nayak, learned Counsel for the Revenue. Though served none appears for the assessee.

3 In view of the decision of the Apex Court in Commissioner of Income Tax Vs. K.T.Doctor, 230 I.T.R 744 confirming the decision of this Court in 124 I.T.R. 501 and the decision dated 30.11.1987 of this Cortr in Income Tax Reference No.399 of 1983 and in view of the fact that the theory of device was not argued before the Tribunal, we hold that the Tribunal was right in law and on facts in confirming the view taken by the C.I.T. (Appeals) in directing the I.T.O. to assess the income returned by the trust itself on substantive basis and not in the hands of the trustee.

4 We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

5 The Reference stands disposed of accordingly with no order as to costs.

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt